



# California State Board of Education Policy

POLICY #
<b>01-06</b>
DATE
November 2001

## WAIVER GUIDELINES

### **Instructional Materials Sufficiency (*Education Code Section 60119*) Waiver of Retroactive Audit Penalty**

REFERENCES
Education Code Section 41344.3
HISTORICAL NOTES
None

### **Education Code Section 60119**

(a) For the 1999-2000 fiscal year and each fiscal year thereafter, in order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

(1) The governing board shall **hold a public hearing or hearings** at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and **shall make a determination, through a resolution**, as to whether each pupil in each school in the district has, or will have prior to the end of that fiscal year, **sufficient textbooks or instructional materials**, or both, in each subject that are consistent with the content and cycles of the curriculum framework adopted by the state board.

(2) (A) If the governing board determines that there are **insufficient textbooks or instructional materials**, or both, the governing board shall provide information to classroom teachers and to the public setting forth the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and **take any action**, except an action that would require reimbursement by the Commission on State Mandates, **to ensure that each pupil has sufficient textbooks or instructional materials, or both, within a two-year period** from the date of the determination.

(B) In carrying out subparagraph (A), the governing board may use money in any of the following funds:

(i) Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.

(ii) Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.

(iii) Any other funds available to the school district for textbooks or instructional materials, or both.

(b) The governing board shall provide **10 days' notice of the public hearing or hearings** set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in **three public places** in the school district. [Emphasis added.]



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### **Background**

Education Code (E.C.) Section 60119 has been in statute since the 1994-95 fiscal year. Most districts had failed to hold these annually required public hearings for the 1994-95, 1995-96, 1996-97, 1997-98, and 1998-99 fiscal years.

- In 1998-99, the State Audit Guide for K-12 Agencies was amended to add a check for these requirements which resulted in many districts receiving audit findings regarding these requirements.
- In late 1998 and early 1999, the State Board of Education (SBE) approved about 600 waivers of this type for prior years (1994-1999), after first requiring the districts prove they were in current compliance with E.C. Section 60119.
- Assembly Bill 1600 (Chapter 646, Statutes of 1999) eliminated the E.C. requirement for all past years, and re-started the annual requirement for the 1999-2000 year.
- Since 1999-2000, districts have continued to have noncompliance findings for various reasons, including turnover of district staff and the extreme detail checked by the State Audit Guide for K-12 Agencies.
- A noncompliance finding would require the local educational agency (LEA) cited to lose all state Instructional Materials funds (Schiff-Bustamante, IMF, and Lottery IMF) for the prior fiscal year. The money would be lost regardless of how or if the money was actually already spent for adopted textbooks and other materials. This result appeared counterproductive to the legislative intent, which was to have sufficient standards aligned texts for all students.

Senate Bill 273 (Chapter 574, Statutes of 2001) created E.C. Section 41344.3 which allows the State Board to act on specific waivers of these retroactive audit findings, **upon finding that violations were “minor or inadvertent” and the intent of E.C. 60119 was substantially met.**

### **Evaluation Guidelines**

Audit findings are of three types:

1. Determine whether the school district **held the public hearing or hearings** in which the school board encouraged participation to make a determination, (through a resolution), as to whether each pupil in each school in the district has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials. If there are insufficient textbooks, the governing board must inform parents, teachers and members of the community interested in school districts, the reason for this and take action to ensure that sufficient textbooks are available within two years.
2. Determine whether the school district provided **10-days’ notice of the public hearing or hearings** described above.



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3. Determine whether the **notice indicated the time place and purpose of the hearing** and was **posted at three public locations** in the school district.

### **Specific Situation Recommendation**

If a district **failed to hold the hearing** within the by the end of the fiscal year in which the local education agency is eligible to receive funds for the purposes of Article 7, Chapter 1, Part 33 of the E.C., **BUT...**

a) They provide <b>certification that all each pupil in each school in the district had sufficient textbooks or instructional materials, or both</b> , in each subject that are consistent with the content and cycles of the curriculum framework adopted by the state board as defined by E.C. Section 60119(a)(1):	100 % reduction in penalty
b) They provide <b>certification that they had taken action</b> to “ensure that each pupil has sufficient textbooks or instructional materials, or both, within a two-year period” for that same fiscal year as defined by E.C. Section 60119(a)(2)(A) and (B). If this is the case the district will be required to submit documentation that explains the insufficiency, and documents the actions being taken to resolve this within the two years:	100 % reduction in penalty

### **Specific Situation Recommendation**

If a district **failed to provide a 10 days’ notice of the public hearing, BUT...**

a) They provide certification of a public notification of <b>some other period of time, per district policy for public hearings, that ensured that participation by parents, teachers and members of the community interested in the affairs of the school district were encouraged</b> as required in E.C. Section 60119(a)(1) or 60119(a)(2)(A):	100 % reduction in penalty
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### **Specific Situation Recommendation**

If a district **failed to post the notice at three public places, BUT...**

a) They provide certification that the district’s method of <b>posting for public hearings ensured that parents, teachers and members of the community interested in the affairs of the school district knew the date, time, place and purpose of the public hearing</b> as required in E.C. Section 60119(a)(1) or 60119(a)(2)(A):	100 % reduction in penalty
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